IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 36303 of 2007(V)

AGAINST THE ORDER IN IA 2418/2006 IN
OS.309/2003 of MUNSIFF COURT, PUNALUR

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PETITIONER:

GOPIKRISHNA REAL ESTATE PVT. LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
ADVOCATE G.C.KANNAN, GOPIKRISHNA, THOLICODU,
PUNALUR.

BY ADV. SRI.M.R.ANANDAKUTTAN
SMT.M.HEMALATHA
SRI.R.S.MADHU
SRI.MAHESH ANANDAKUTTAN

RESPONDENTS:

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1. MR.C.RADHAKRISHNAN, RADHA BHAVAN,
THAZHATHU BHAGOM, PUNALUR.

2. MR.C.REGHUNATHAN NAIR, RADHA BHAVAN,
THAZHATHU BHAGOM, PUNALUR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.36303 OF 2007

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Dated this the 7th day of December 2007

JUDGMENT

This writ petition is preferred against the order of the Munsiff's Court, Punalur in I.A.No.2418 of 2006 in O.S.No.309 of 2003. The prayer in the I.A. is to consider the objections and decide about the acceptability of the Commissioner's report. The court below found that since the Commissioner's plan and report had been made use of by the trial court as well as by the appellate court to arrive at a decision, if that petition is entertained, it will amount to violation of the appellate court's order and therefore dismissed the application. I feel that neither a proper application was filed nor a proper order was passed. Ordinarily when a Commissioner's report is filed, the parties must resort to 3 methods, viz, (1) to file objections and request the court to record the objection thereby reserving their right to adduce evidence at a later stage, (2) that the particulars furnished by the Commissioner are insufficient or there is some mistake which has to be corrected and therefore pray for a remission and (3) an application with a major relief that as the Commissioner's plan and report

are not helpful at all and it is wrong, it has to be set aside. But, I find here that the prayer is of a peculiar nature and it may be difficult for any court to entertain such an application. I also equally feel that the court was not correct when it recorded that as the Commissioner's report had been perused by the appellate court, if the petition is entertained it will amount to questioning of the appellate court's order. The proper procedure to be adopted is that if the petitioner is totally dissatisfied with the Commissioner's plan and report, may file an application to set aside the same or if he or she is of the opinion that additional particulars are necessary or there are factual mistakes, which can be corrected, he may file an application for remission. If he chooses to do so and after giving notice to the other side and objections being filed, the court may permit the parties to adduce evidence in support of their respective contentions. I make it very clear that this order will not preclude the parties from moving the application as directed above. In order to enable the parties to file a petition, the court may adjourn the trial of the case by 10 days.

M.N.KRISHNAN, JUDGE

Cdp/-